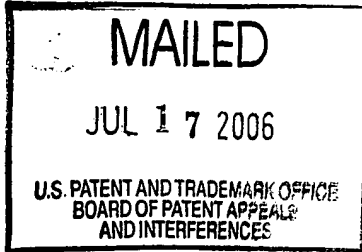


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JULIET C. KRAAL and DANIEL ARBITTER

Application 09/630,918

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on July 14, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

On June 15, 2006 an Order Returning Undocketed Appeal to Examiner was mailed¹ which requested that the examiner:

1. notify appellants to submit a substitute Appeal Brief which corrects the “Summary of claimed subject matter”;
2. submit a revised Examiner’s Answer which corrects the “Real Party in Interest” and the “Evidence Relied Upon” sections;
3. consider the October 18, 2004 Information Disclosure Statement (IDS) and notify appellants regarding the Primary Examiner’s decision; and
4. for such further action as may be appropriate.

On June 27, 2006, an Office communication was mailed which stated:

The Board remanded the appeal brief filed on 10/20/05 because the “Summary of claimed subject matter” appearing on pages 2-7 was deficient in not mapping the claimed invention to the independent claims; and the headings “Real Party of [sic, in] Interest” and “Evidence Relied Upon” were absent. Furthermore, the Board wanted an explanation [sic] as to why the 10/18/04 IDS was not considered. At the time of examination, some of the non-patent and patent literature was absent from the case, thus was not considered.

¹ This Order was originally mailed on June 9, 2006 but was remailed on June 15, 2006 in order to incorporate page 2, which was missing from the original copy.

Section 41.37(d) of the Code of Federal Regulations (2005)

states:

If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed [emphasis added].

In addition, regarding the Information Disclosure Statement (IDS) filed October, 18, 2004, section 609(C)(1) of the Manual of Patent Examining Procedure (MPEP) (Eighth Edition, Rev. 2, May 2004) states:

If an information disclosure statement does not comply with the requirements based on the time of filing of the IDS as discussed in subsection III.B [], including the requirements for fees and or statement under 37 CFR 1.97(e), the IDS will be placed in the application file, but none of the information will be considered by the examiner. The examiner may use form paragraph 6.49 . . . to inform applicant that the information has not been considered. Applicant may then file a new information disclosure statement or correct the deficiency in the previously filed IDS, but the date that the new IDS or correction is filed will be the date of the IDS for purposes of determining compliance with the requirements based on the time of filing of the IDS (37 CFR 1.97).

The examiner should write “not considered” on an information disclosure statement where none

of the information listed complies with the requirements. . . . If none of the information listed on a PTO-1449 . . . form is considered, a diagonal line should also be drawn in pencil across the form and the form placed on the right side of the application file. . . . The examiner will inform applicant that the information has not been considered and the reasons why by using form paragraphs 6.49 through 6.49.09. . . .

If an item of information in an IDS fails to comply with all the requirements of 37 CFR 1.97 and 37 CFR 1.98, that item of information in the IDS will not be considered and a line should be drawn through the citation to show that it has not been considered. However, other items of information that do comply with all the requirements of 37 CFR 1.97 and 37 CFR 1.98 will be considered by the examiner.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

1) for notification to appellants to submit a substitute Appeal

Brief which corrects the “Summary of claimed subject matter”;

2) for notification to appellants regarding the time period with

which to submit the above-noted substitute Appeal Brief;

3) for consideration of the substitute Appeal Brief;

4) for submission of a revised Examiner’s Answer which

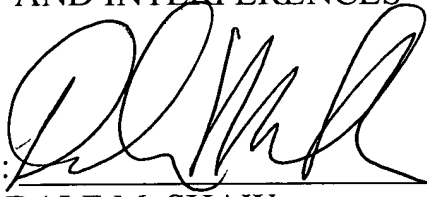
corrects the “Real Party in Interest” and the “Evidence Relied Upon”

sections;

5) for proper consideration of the IDS filed October 18, 2004,
and appropriate notification to appellants regarding the Primary Examiner's
decision; and

6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
DALE M. SHAW
Deputy Chief Appeal Administrator
(571) 272-9797

DMS:psb

Daniel H. Bliss
Bliss McGlynn PC
Suite 600
2075 West Big Beaver Road
Troy, MI 48084